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**VIA ECF AND ELECTRONIC MAIL TO  
bernstein.chambers@nysb.uscourts.gov**

Honorable Stuart M. Bernstein  
United States Bankruptcy Court  
Southern District of New York  
One Bowling Green, room 723  
New York, NY 10004-1408

Re: Picard v. Stanley I. Lehrer, et al., Adv. Pro. No. 10-05259 (SMB) – Pro Se Filings

Dear Judge Bernstein:

We act as special counsel to Irving H. Picard, trustee (the “Trustee”) for the substantively consolidated liquidation proceedings of Bernard L. Madoff Investment Securities LLC (“BLMIS”) and Bernard L. Madoff under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq. (“SIPA”) in the above-referenced action (the “Proceeding”).

We write in connection with two documents that were recently posted to the docket of the Proceeding by the Court’s clerk: (1) the *pro se* Answer to Amended Complaint by Eunice Chervony Lehrer [Dkt. No. 104], received by the Court and by us on June 2, 2014 (the “Eunice Lehrer Answer”) and (2) a Letter to Irving H. Picard dated March 7, 2011 from Ms. Lehrer and her husband and co-defendant Stanley I. Lehrer [Dkt. No. 103], also received on June 2, 2014 (the “2011 Letter”).

First, we write to point out that although Ms. Lehrer filed the answer as a *pro se* defendant, she has been represented by counsel in the Proceeding since 2011. Specifically, on April 1, 2011, a Notice of Appearance and Request for Service of Papers was filed by Becker & Poliakoff LLP (“B&P”) on behalf of Ms. Lehrer [Dkt. Nos. 20 and 21], and B&P thereafter entered into multiple stipulations to extend Ms. Lehrer’s time to respond to the Trustee’s amended complaint. On October 31, 2013, B&P filed an omnibus motion to dismiss as counsel to defendants in various BLMIS adversary proceedings, including on behalf of Ms. Lehrer [Dkt. No. 75, Exhibit B p.5]. On January 17, 2014, the Trustee and SIPC filed their oppositions to the motion to dismiss [Dkt. Nos. 81 and 82], and on February 21, 2014, B&P filed a reply on behalf of the same defendants [Dkt. No. 92]. The motion to dismiss is currently pending.

While Ms. Lehrer has a right to be represented by counsel and a right to be *pro se*, she cannot do both. *See, e.g., Ennis v. E. LeFevre*, 560 F.2d 1072, 1075 (2d. Cir. 1977). Although it is therefore not clear whether B&P’s motion to dismiss or the Eunice Lehrer Answer is the



operative pleading, unless the Court indicates otherwise, we will treat the Eunice Lehrer Answer as properly filed and reply to the counterclaim asserted therein. We have copied Helen Davis Chaitman and Peter W. Smith of B&P on this letter, as counsel of record. We have also copied Eunice Chervony Lehrer.

Second, to the extent Mr. and Ms. Lehrer enclosed the 2011 Letter with their answers<sup>1</sup> in order to advise the Court and us of their inability to file electronically, that has been addressed by the Court clerk's posting of such documents to the docket. To the extent the 2011 Letter communicates their inability to contact attorneys at our firm, we note that (i) with respect to Ms. Lehrer, all of our communications have been with B&P, as her counsel of record and (ii) with respect to Mr. Lehrer who has always appeared *pro se*, our attorneys have been in contact with him from the beginning of the Proceeding, in connection with the execution of multiple stipulations extending his time to respond to the amended complaint, the most recent of which was executed on May 14, 2014. [Dkt. No. 95].

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Howard L. Simon". The signature is fluid and cursive, with a large, stylized "S" at the end.

Howard L. Simon

Cc: Helen Davis Chaitman, Esq. (by e-mail)  
Peter W. Smith, Esq. (by e-mail)  
Eunice Chervony Lehrer (by mail and e-mail)

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<sup>1</sup> A *pro se* answer by Stanley I. Lehrer was also received by the Court and by us on June 2, 2014, and posted to the docket as Dkt. No. 105.